

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

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IN THE MATTER OF: )  
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Order No. 10 -xxx -SW

Mr. Joseph Bonicelli and/or )  
Joseph Bonicelli dba JB Waste Connection )  
2480 Foshee Road )  
Montgomery, Alabama )  
\_\_\_\_\_ )

FINDINGS OF FACTS

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16, (2006 Rplc. Vol.), and the Solid Wastes and Recyclable Materials Management Act (SWRMMA), Ala. Code §§ 22-27-1 to 22-27-18 (2006 Rplc. Vol. and 2009 Cum Supp.), and the ADEM Administrative Code promulgated hereunder, the Alabama Department of Environmental Management (hereinafter “ADEM” or “the Department”) makes the following finding of facts:

1. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).

2. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.) and Ala. Code § 22-27-9(a) (2006 Rplc. Vol. and 2009 Cum Supp.), the Department is the state agency authorized to administer and enforce the provisions of the Solid Wastes and Recyclable Materials Management Act (SWRMMA), Ala. Code §§ 22-27-1 to 22-27-18 (2006 Rplc. Vol. and 2009 Cum. Supp.).

3. Ala. Code §22-27-2(36) (2006 Rplc. Vol. and 2009 Cum. Supp.) defines an “unauthorized dump” as “any collection of solid wastes either dumped or caused to be

dumped or placed on any public or private property, whether or not regularly used, and not having a permit from the Department.”

4. Ala. Code § 22-27-4(b) (2006 Rplc. Vol. and 2009 Cum. Supp.) states the following: “The creation, contribution to, or operation of unauthorized dumps shall be prohibited, removed, enjoined...”

5. Ala. Code § 22-27-10(b) (2006 Rplc. Vol. and 2009 Cum. Supp.) states the following: “The creation, contribution to, or operation of an unauthorized dump is declared to be a public nuisance per se, a menace to public health, and a violation of this article.”

6. ADEM Admin. Code r. 335-13-1-.13 (1) (a) prohibits open or unauthorized dumps.

7. On February 10, 2010, Department personnel conducted an inspection and documented the existence of an unauthorized solid waste dump (hereinafter “UAD”) located at 2480 Foshee Road, Montgomery, Montgomery County, Alabama (hereinafter “site”). The UAD consisted of construction/demolition waste. The Department has determined that Joseph Bonicelli (hereinafter “Mr. Bonicelli”) was responsible for the creation of the unauthorized dump.

8. On February 17, 2010, the Department issued a Notice of Violation (hereinafter “NOV”) to Mr. Bonicelli for operating an UAD.

9. The Department did not receive a response to the February 17, 2010, NOV.

10. On March 31, 2010, the Department issued a Failure to Respond letter to Mr. Bonicelli requesting a response to the February 17, 2010, NOV.

11. On April 13, 2010, the Department received a response to the March 31, 2010, Failure to Respond letter. The response included a schedule for abatement and closure of the UAD, with all activities being completed by September 30, 2010.

### **CONTENTIONS**

Pursuant to Ala. Code § 22-22A-5(18)c. (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent, and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than \$100.00 or exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such a violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. **SERIOUSNESS OF THE VIOLATION:** Mr. Bonicelli did not comply with the requirements applicable to solid waste disposal. The Department is unaware of any irreparable harm to the environment, any immediate threat to human health, or the safety of the public as a result of these violations.

B. **THE STANDARD OF CARE:** Mr. Bonicelli failed to abide by the applicable solid waste requirements.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has been unable to determine if Mr. Bonicelli has realized a significant economic benefit as a result of the violations noted.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is unaware of any attempts by Mr. Bonicelli to mitigate any potential effects upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: Mr. Bonicelli has a history of similar violations.

F. THE ABILITY TO PAY: Mr. Bonicelli has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and has concluded that a civil penalty in the amount of \$5,000.00 is appropriate, in keeping with a penalty range imposed by the Department for similar violations at other UAD, as follows (see attachment A):

<u>Violation Type</u>	<u>Penalty Range for Violation Type</u>
Unauthorized Solid Waste Dump	\$100 - \$25,000

### **ORDER**

Based on the foregoing findings of fact and pursuant to Ala. Code, §§ 22-22A-5(1), 22-22A-5(10), 22-22A-5(18), 22-27-4(b), 22-27-7, and 22-27-11 it is hereby ordered:

A. That, not later than forty-five days after issuance of this Order, Mr. Bonicelli shall pay to the Department a civil penalty in the amount of \$5,000.00 for the violations cited herein. The penalty shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel  
Alabama Department of Environmental Management  
P O Box 301463  
Montgomery, Alabama 36130-1463

All checks shall reference Mr. Bonicelli's name and address and the ADEM Administrative Order number of this action.

B. That, immediately upon the issuance of this Order and continuing each and every day thereafter, Mr. Bonicelli shall cease and desist from operating an UAD at any location.

C. That, Mr. Bonicelli shall complete all abatement and closure activities for this site, in accordance with Division 13 regulations, by September 30, 2010. Mr. Bonicelli shall document abatement activities by submitting monthly reports to the Department for review. The monthly reports shall include at a minimum the following and shall be submitted to the Department no later than the 15<sup>th</sup> day of the month following the end of the preceding month:

1. Total volume of waste removed from the property during the preceding month.
2. Name of the solid waste disposal facility where solid waste was disposed.

3. A copy of waste receipts documenting that all regulated solid waste was disposed of in a permitted landfill.
4. Photographs of the site documenting abatement activities for the reporting period.

D. That the issuance of this Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against Mr. Bonicelli for the violations cited herein.

E. That failure to comply with the provisions of the Order shall constitute cause for commencement of legal action by the Department against Mr. Bonicelli for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this \_\_\_\_ day of \_\_\_\_\_, 2010.

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John P. Hagood  
Director

**CERTIFICATE OF SERVICE**

I, \_\_\_\_\_, hereby certify that I have this date  
served the foregoing Administrative Order on \_\_\_\_\_  
by regular United States Mail, properly addressed and postage prepaid to:

**Mr. Joseph Bonicelli  
2480 Foshee Road  
Montgomery, Alabama 36108**

Done this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
**Name**

# ATTACHMENT A

## Penalty Calculation Worksheet

Joseph Bonicelli  
2480 Foshee Road  
Montgomery, AL 36108

Violation*	Number of Violations*	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
ADEM Admin Code r. 335-13-1-.13 (1) (a) declares that open or unauthorized dumps are prohibited.	1	\$5,000	\$0	\$0
<b>Totals:</b>	1	\$5,000	\$0	\$0

Economic Benefit\*: \$0  
Mitigating Factors\*: \$0  
Ability to Pay\*: \$0  
Other Factors\*: \$0

**Total Civil Penalty: \$5,000**

### Footnotes

\* See the "Findings" of the Order